

### **How are the Coastal Nonpoint Pollution Control Program (CNPCP) and Coastal Zone Act Reauthorization Amendments (CZARA) related?**

Congress established the CNPCP in 1990 under Section 6217 of CZARA. NOAA and EPA jointly administer CZARA. The federal requirements are designed to restore and protect coastal waters from nonpoint source pollution and require coastal states that participate in the National Coastal Zone Management Program to develop programs, backed by enforceable policies, that provide for the implementation of a set of management measures based on guidance published by EPA (aka the (g) guidance because the subsection (g) calls for it). The Coastal Nonpoint Program relies on state coastal zone management and water quality programs to apply management measures to prevent and mitigate polluted runoff from six main sources:

- forestry,
- agriculture,
- urban areas,
- marinas,
- hydromodification (shoreline and stream channel modification), and
- loss of wetlands and riparian areas.

### **What does Oregon's Coastal Nonpoint Program look like?**

In July of 1995, Oregon completed its Program Submittal for the CNPCP. Oregon's CNPCP Submittal described existing programs and proposed work tasks that would meet the terms of CZARA and EPA and NOAA's guidance and work to improve coastal water quality in Oregon's. Current state water quality, wetland, and land use laws, as well as the Forest Practices Act and the early development of *The Oregon Plan* for Salmon and Watersheds, insured that the state already met many requirements of CZARA.

In January 1998, after reviewing the state's program submittal, EPA and NOAA returned their findings to the state that granted a conditional approval to Oregon's program. The 1998 findings document placed roughly 40 conditions on Oregon's program that it needed to address before it could receive full approval for its CNPCP. Today, only three conditions remain: 1) additional management measures for forestry; 2) inspection of existing on-site disposal systems; and 3) new development. Although EPA and NOAA found that Oregon had satisfied the requirements for the forestry management measures at the time of conditional approval, approving the state for those measures, the agencies also identified that additional forestry management measures were needed because of the sensitive salmonid population. NOAA and EPA similarly required Washington to develop additional management measures for forestry as well.

### **What are the details of the OR CZARA Settlement Agreement?**

In September 2010, EPA and NOAA signed a Settlement Agreement with NWEA to address the three areas that had been conditionally approved in Oregon's CNPCP. Oregon agreed to address the areas by doing the following:

- 1) Additional Forestry management measures -
  - a) doing an implementation-ready TMDL in the Mid-Coast Basin; or
  - b) doing a forestry rulemaking.
- 2) On-site disposal systems – developing rule for time-of-transfer inspections
- 3) New development – developing guidance on how to deal with new development

### **How would Oregon be affected if the CNPCP weren't approved?**

#### **Funds Lost**

# **Ex. 5 - Deliberative**

# Ex. 5 - Deliberative

Federal Consistency on Deep Water Ports [Allison, can you add here?]

Reputation [Dave, can you add here?]

## What is required in Oregon for EPA and NOAA to approve the programs?

State coastal nonpoint programs must provide for the implementation of the management measures, backed by enforceable authorities. State Coastal Nonpoint Programs also have programs in place to monitor and track the implementation of management measures.

To receive full approval, CZARA states that each coastal nonpoint program must “provide for the implementation, at a minimum, of management measures in conformity with the guidance published under section (g)....” (6217(b)). The guidance, *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance*, explains that state programs must:

- identify NPS categories or subcategories that will be addressed;
- identify management measures to be implemented for those categories and subcategories; and
- describe the process by which the state will ensure the implementation of the management measures.

States do not have to be implementing the measures to receive approval.

Section III.C.3 of the Program Development and Approval Guidance (pg. 20-21) provides additional information on how a state can show it will ensure implementation of the management measures.

At a minimum, the state program will:

- Describe the scope, structure, and coverage of the implementation program
- Describe the organization, structure, and authorities of the state/local agency that has responsibility for implementing the program, including identifying the lead agency (if outside the 319 or CZM programs, a description of how the lead agency and its authorities have been incorporated into the coastal nonpoint program) and a description of how the lead agency expects to implement the program including, for example, the number of staff and general responsibilities, cost of the program, and potential funding sources.
- Include a schedule with milestones for achieving full implementation of the management measures within 3 yrs (Note: The 1998 “Administrative Changes” guidance later increased the implementation time to 15 yrs given the complexities of the program)
- Identify enforceable mechanisms and policies to ensure implementation. If that authority is outside the 319 or CZM programs, the state must include provisions to ensure that the

governmental body with the statutory authority exercises that authority (i.e., MOUs, EOs, or administrative directives).

- Describe the mechanisms to improve coordination among state agencies and among state and local officials responsible for land use and water quality programs and permitting/enforcement, etc.
- Describe a process to identify practices to achieve the management measures.
- Describe activities to ensure continuing performance and long term effectiveness of the management measures through proper operation and maintenance.
- Describe state activities to monitor the effectiveness of the management measures.

### **What does Oregon need to do to satisfy the condition for additional management measures for forestry on its program?**

Generally, EPA and NOAA are looking for the state to address three areas:

- 1) Address the impacts of road density and maintenance, particularly legacy roads. For example, the state is considering developing a program to assess legacy roads with reasonable timelines and fix them on a reasonable schedule;
- 2)
- 3) Better protection of riparian areas, including small and non-fish bearing streams, including the adequacy of stream buffers for the application of certain chemicals. Better protection of high-risk landslide areas. For example, the state is considering identifying high-risk landslide areas, determining reasonable measures to address them, and fixing on a reasonable schedule; and
- 4)

### **What does Oregon need to do to satisfy the condition for new development on its program?**

The (g) guidance requires states to ensure the site is permanently stabilized to reduce TSS loadings by 80% or reduce the post-development loadings of TSS so that the average annual TSS loadings are no greater than predevelopment loadings. In addition, to the extent practicable, states need to maintain postdevelopment peak runoff rate and average volume at levels that are similar to predevelopment levels.

To address its new development condition, Oregon is proposing to develop guidance and outreach program for TMDL Implementation Plan Development for Urban/Rural Areas within the CNPCP Management Area.

### **What does Oregon need to do to satisfy the condition for OSDS on its program?**

The (g) guidance requires states to inspect OSDS at a frequency to ascertain whether OSDS are failing. NOAA and EPA have agreed that states can meet this measure in several ways such as passing state laws requiring regular OSDS inspections (every 3-5 yrs, or, at a minimum, at time of transfer) by trained/certified inspector, demonstrating that most of the counties in the CNPCP management area have ordinances requiring regular OSDS inspections, demonstrating that most lending institutions voluntarily require point of sale inspections as a requirement for a loan, demonstrating that through a variety of state, local and voluntary programs (including dedicated funding to support voluntary OSDS inspection programs) the state will reach most of the existing systems within the CNPCP within 15 yrs.

To address its condition, Oregon has pursued a rule change to require point of sale inspections within the CNPCP management area. However, passage of the rules by the EQC has been delayed due to concern from a couple of state legislators that are opposed to the rules and because a recent ballot measure prevents ODEQ from collecting a fee for time of transfer inspection reports to support the program.

**How was Oregon's program conditioned related to agriculture and how has the state addressed that condition? Are there other agricultural improvements we should still strive for?** In 1998, EPA and NOAA placed several conditions on Oregon's CNPCP related to agriculture:

**CAFOS:** Include in its program management measures in conformity with the 6217 (g) guidance for facilities where animals are confined for less than four months and that do not have prepared surfaces or waste water control facilities. Also, Oregon demonstrate it has authority to enforce the CAFO measures.

**Erosion & Sediment Control, Nutrient, Pesticide, Grazing, and Irrigation Water Management:** Oregon will (1) designate agricultural water quality management areas (AWQMAs) that encompass agricultural lands within the 6217 management area, and (2) complete the wording of the alternative management measure for grazing, consistent with the 6217(g) guidance. Agricultural water quality management area plans (AWQMAPs) will include management measures in conformity with the 6217(g) guidance, including written plans and equipment calibration as required practices for the nutrient management measure, and a process for identifying practices that will be used to achieve the pesticide management measure. The State will develop a process to incorporate the irrigation water management measure into the overall AWQMAPs. Within five years, AWQMAPs will be in place.

NOAA and EPA believe Oregon has met these conditions through revisions to its CAFO rules, its AWQMA planning process which includes language consistent with the 6217(g) measures the appendices of all plans, and specific programs for nutrient and irrigation management. We notified the state of our unofficial decision in an interim decision document on January 13, 2004. However, this decision has not gone out for public comment and could be adjusted if we feel the programs and authorities no longer enable Oregon to satisfy its agriculture conditions.

EPA and NOAA recognize that although Oregon has satisfied the agriculture management measure requirements and has processes in place to identify additional management measures when needed, water quality impairments due to agriculture are still occurring. This is an issue NWEA has raised several times in recent letters to NOAA and EPA. The Western Washington Tribes are raising similar concerns regarding Washington's agricultural practices. Given the ongoing regional concerns regarding agriculture, EPA may want to work with Oregon to continue to strengthen its agricultural programs related to water quality. Four potential areas include:

- 1) More information on degree of enforcement of SB 1010 agricultural water quality management plans;
- 2) Specificity in administrative rules within agricultural quality management area plans for prioritizing restoration and specific best practices, especially related to riparian management;
- 3) Enforcing CAFO inspections;
- 4) Riparian buffers and pesticides

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#### **Who are the program contacts?**

##### **NOAA**

- Margaret Davidson (Acting Director Office of Ocean and Coastal Resource Management)--by phone ([margaret.davidson@noaa.gov](mailto:margaret.davidson@noaa.gov))
- Joelle Gore (Acting Division Chief, OCRM Coastal Programs Division)--by phone ([joelle.gore@noaa.gov](mailto:joelle.gore@noaa.gov))
- Kris Wall (Northwest Regional CZM Specialist, Portland) ([kris.wall@noaa.gov](mailto:kris.wall@noaa.gov))

##### **DLCD**

- Jim Rue (Director)—

- Patty Snow (CZM Program Manager)--[patty.snow@state.or.us](mailto:patty.snow@state.or.us)

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- agriculture,
- urban areas,
- marinas,
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- loss of wetlands and riparian areas.

**Comment [AC1]:** Word choice is very important here. CZARA only requires states to provide for the implementation of MM, not implement them...a critical distinction when it comes to approvability of a state's CNP.

**Comment [AC2]:** While EPA published the technical (g) guidance. NOAA and EPA jointly published the programmatic guidance and subsequent guidance memos clarifying the programmatic guidance that provides additional guidance on what states need to do to have an approved program.

### What does Oregon's Coastal Nonpoint Program look like?

In July of 1995, Oregon completed its Program Submittal for the CNPCP. Oregon's CNPCP Submittal described existing programs and proposed work tasks that would meet the terms of CZARA and EPA and NOAA's guidance and work to improve coastal water quality in Oregon's coastal zone. Current state water quality, wetland, and land use laws, as well as the Forest Practices Act and the early development of *The Oregon Plan* for Salmon and Watersheds, insured that the state already met many requirements of CZARA.

**Comment [AC3]:** Note, OR's CNP mngt area is broader than its coastal zone boundary.

In January 1998, after reviewing the state's program submittal, EPA and NOAA returned their findings to the state that granted a conditional approval to Oregon's program. The 1998 findings document placed roughly 40 conditions on Oregon's program that it needed to address before it could receive full approval for its CNPCP. Today, only three conditions remain: The three areas with conditional approvals are 1) additional management measures for forestry; 2) inspection of existing on-site disposal systems; and 3) nNew development. Although EPA and NOAA found that Oregon had satisfied the requirements for the forestry management measures at the time of conditional approval, approving the state for those measures, the agencies also identified that approved management measures for forestry in the CNPCP approval, but identified that additional forestry management measures were needed in Oregon and Washington because of the sensitive salmonid population. NOAA and EPA similarly required Washington to develop additional management measures for forestry as well.

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- 3) New development – developing guidance on how to deal with new development

**Comment [AC4]:** But this isn't the settlement agreement. OR isn't party to the agreement. NOAA and EPA agreed to issue the Dec. letter, announce our intent to approve/disapprove the state's program by Nov. 15, 2013 and make a final decision to approve/disapprove Oregon's program by May 15, 2014.

### How would Oregon be affected if the CNPCP weren't approved?

Funds Lost

**Comment [AC5]:** See the TPs and funding

## Ex. 5 - Deliberative

**Comment [AC6]:** I have they received \$2.17M for 319 in FY12 (that's the figures that Don provided)

**Comment [AC7]:** See spreadsheet for adjusted calculations. These #s are wrong.

# Ex. 5 - Deliberative

**Comment [AC8]:** See spreadsheet for adjusted #s.



# Ex. 5 - Deliberative

Comment [AC9]: See spreadsheet.

Federal Consistency on Deep Water Ports [Allison, can you add here?]  
Reputation [Dave, can you add here?]

Comment [AC10]: See my TPs from yesterday. Note the Federal Consistency and Deepwater Ports issues would only arise if OR decided to pull out of the National CZM Program (because they would have a significant financial incentive to do so). These impacts would not occur just because NOAA and EPA disapprove Oregon's CNPCP.

## What is required in Oregon for EPA and NOAA to approve the programs?

State coastal nonpoint programs must provide for the implementation of the management measures, backed by enforceable authorities and provide accountability through a variety of tools, including rules, ordinances, voluntary approaches, educational campaigns and financial incentives, all backed by enforceable policies and mechanisms. State Coastal Nonpoint Programs also have programs in place to must monitor and track the implementation of management measures.

In 1993, programmatic guidance was developed, and a technical guidance document was also developed that describes in more details the expectations of what should be completed for management measures. In general, states must demonstrate that their program work and are backed by enforceable policies and mechanisms.

To receive full approval, CZARA states that each coastal nonpoint program must "provide for the implementation, at a minimum, of management measures in conformity with the guidance published under section (g)..." (6217(b)). The guidance, *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance*, explains that state programs must:

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- and
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lead agency expects to implement the program including, for example, the number of staff and general responsibilities, cost of the program, and potential funding sources.

- Include a schedule with milestones for achieving full implementation of the management measures within 3 yrs (Note: The 1998 "Administrative Changes" guidance later increased the implementation time to 15 yrs given the complexities of the program)
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- Describe a process to identify practices to achieve the management measures.
- Describe activities to ensure continuing performance and long term effectiveness of the management measures through proper operation and maintenance.
- Describe state activities to monitor the effectiveness of the management measures.

**Comment [AC11]:** This is language that I pulled together for a similar Q&A a while ago. You may find it helpful here.

#### What are EPA's does Oregon need to do to satisfy the condition for additional management measures for forestry on its program expectations for forestry to approve the program?

Generally, EPA and NOAA are looking for the state to address three areas: at three areas to be addressed in forestry. They include:

- 1) Address the impacts of road density and maintenance, particularly legacy roads. For example, the state is considering developing a program to ~~Reads~~ assess legacy roads with reasonable timelines and fix them on a reasonable schedule;
- 2) ~~Landslides~~ assess landslides, prioritize (e.g., high-risk areas), determine reasonable measures to address them, and fix on a reasonable schedule; and
- 3) Better protection of riparian areas, including small and non-fish bearing streams ~~Address riparian buffers on non fish bearing streams (Type "N"), including the adequacy of stream buffers for the application of certain chemicals.~~
- 4) Better protection of high-risk landslide areas. For example, ~~Landslides~~ the state is considering identifying high-risk ~~assess landslide areas, prioritize (e.g., high risk areas), determining reasonable measures to address them, and fixing on a reasonable schedule; and~~

**Comment [AC12]:** We can't be prescriptive. The state can address the impacts of roads in several ways. We are supportive of the path they are taking but that is not the only approach we would approve.

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**Comment [AC13]:** Again, can't be prescriptive but can support proposals the state is considering and say what specifically we'd need from them if they chose that route.

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#### What does Oregon need to do to satisfy the condition for new development on its program?

##### What are EPA's expectations for other programs (new development, OSDS) to approve the program? OSDS options--

The (g) guidance requires states to ensure the site is permanently stabilized to reduce TSS loadings by 80% or reduce the post-development loadings of TSS so that the average annual TSS loadings are no greater than predevelopment loadings. In addition, to the extent practicable, states need to maintain postdevelopment peak runoff rate and average volume at levels that are similar to predevelopment levels.

To address its new development condition, Oregon is proposing to develop guidance and outreach program for TMDL Implementation Plan Development for Urban/Rural Areas within the CNPCP Management Area.

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inspections, demonstrating that most lending institutions voluntarily require point of sale inspections as a requirement for a loan, demonstrating that through a variety of state, local and voluntary programs (including dedicated funding to support voluntary OSDS inspection programs) the state will reach most of the existing systems within the CNPCP within 15 yrs.

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- State rules pass a time of transfer exception; or
- Showing counties have a time of transfer approach; or
- Voluntary mechanisms for time of transfer during lending

#### New Development

- Development of guidance

How was Oregon's program conditioned related to agriculture and how has the state addressed that condition? Are there other agricultural improvements we should still strive for? are EPA's expectations for agriculture to approve the program?

In 1998, EPA and NOAA placed several conditions on Oregon's CNPCP related to agriculture:

CAFOs: Include in its program management measures in conformity with the 6217 (g) guidance for facilities where animals are confined for less than four months and that do not have prepared surfaces or waste water control facilities. Also, Oregon demonstrate it has authority to enforce the CAFO measures.

Erosion & Sediment Control, Nutrient, Pesticide, Grazing, and Irrigation Water Management: Oregon will (1) designate agricultural water quality management areas (AWQMAs) that encompass agricultural lands within the 6217 management area, and (2) complete the wording of the alternative management measure for grazing, consistent with the 6217(g) guidance. Agricultural water quality management area plans (AWQMAPs) will include management measures in conformity with the 6217(g) guidance, including written plans and equipment calibration as required practices for the nutrient management measure, and a process for identifying practices that will be used to achieve the pesticide management measure. The State will develop a process to incorporate the irrigation water management measure into the overall AWQMAPs. Within five years, AWQMAPs will be in place.

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Generally, EPA is looking at four areas to be addressed in agriculture. They include:

- 1) More information on degree of enforcement of SB 1010 agricultural water quality management plans;
- 2) Specificity in administrative rules within agricultural quality management area plans for prioritizing restoration and specific best practices, especially related to riparian management;
- 3) Enforcing CAFO inspections;

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Comment [AC14]: Moved after all conditions.

Comment [AC15]: Like Dave's edit to this question and responses. May want to combine both.

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- 4) Riparian buffers and pesticides

~~What are EPA's expectations for other programs (new development, OSDS) to approve the program?~~

~~OSDS options=~~

- ~~• State rules pass a time-of-transfer exception, or~~
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~~New Development=~~

- ~~• Development of guidance~~

#### Who are the program contacts?

##### NOAA

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- Joelle Gore (Acting Division Chief, OCRM Coastal Programs Division)--by phone ([joelle.gore@noaa.gov](mailto:joelle.gore@noaa.gov))
- Kris Wall (Northwest Regional CZM Specialist, Portland) ([kris.wall@noaa.gov](mailto:kris.wall@noaa.gov))

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- Patty Snow (CZM Program Manager)--[patty.snow@state.or.us](mailto:patty.snow@state.or.us)